

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:) Case No.: 16-50241
)
BRIAN CAPIEN,) Chapter 13
)
Debtor.) Judge Alan M. Koschik
)
)
) <u>UNITED STATES' OBJECTION TO</u>
) <u>CONFIRMATION OF DEBTOR'S</u>
) <u>CHAPTER 13 PLAN, COMBINED WITH</u>
) <u>NOTICE THEREOF</u>

NOW COMES the United States of America, on behalf of its agency, the Internal Revenue Service (the "Service"), by its attorney, Carole S. Rendon, Acting United States Attorney for the Northern District of Ohio, through Suzana K. Koch, Assistant U.S. Attorney, and hereby objects to confirmation of Debtor's Chapter 13 plan.

IN SUPPORT of its objection, the United States represents as follows:

1. The records of the Service indicate that the debtor has not filed federal income tax returns for the tax years 2010, 2011, 2012, 2013, 2014 and 2015. The returns for 2012, 2013, 2014 and 2015 are returns required under 11 U.S.C. § 1325(a)(9), which compels debtors to file all applicable Federal, State, and local tax returns as required by 11 U.S.C. § 1308. The provisions of 11 U.S.C. § 1325 are mandatory and must be complied with to obtain confirmation of a chapter 13 plan. Shaw v. Aurgroup Financial Credit Union, 552 F.3d 447, 449 (6th Cir. 2009).¹

¹ In a pending Chapter 13 proceeding, delinquent tax returns should be mailed to the Internal Revenue Service, Insolvency Group, 1240 East Ninth Street, Room 493, Cleveland, Ohio 44199 for filing.

2. The Debtor's liabilities for the tax years 2010 through 2015, inclusive, are nondischargeable. 11 U.S.C. § 1328(a)(2).

3. The United States notes that Debtor's plan fails to provide for the Service's secured and unsecured priority claims. The Service's proof of claim, filed February 24, 2016, , and identified on the claims register as Claim No. 3-1, reflects a secured claim in the amount of \$76,300.00 and an unsecured priority claim in the aggregate amount of \$7,914.64.

WHEREFORE the United States prays that confirmation of Debtor's Chapter 13 plan be denied.

Respectfully submitted,

CAROLE S. RENDON
Acting United States Attorney

By: /s/ Suzana K. Koch
Suzana K. Koch (OH: 0073743)
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3600
(216) 522-4982 (facsimile)
Suzana.Koch@usdoj.gov

NOTICE OF UNITED STATES' OBJECTION
TO CONFIRMATION OF AMENDED CHAPTER 13 PLAN

The United States of America, on behalf of the Internal Revenue Service, has filed papers with the court requesting that confirmation of this Chapter 13 plan be denied.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you or your attorney wish to file a written response to the United States' objection, you should file it with:

Clerk of Bankruptcy Court
U.S. Bankruptcy Court
455 U.S. Courthouse
Two South Main St.
Akron, Ohio 44308

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date of the confirmation hearing.

You (or your attorney) should also mail a copy of the response to:

Chapter 13 Trustee:
Keith Rucinski
Chapter 13 Trustee
One Cascade Plaza
Suite 2020
Akron, Ohio 44308

Movant's Attorney:
Suzana K. Koch
Assistant United States Attorney
United States Court House
801 West Superior Avenue
Suite 400
Cleveland, OH 44113

You and/or your attorney should also be present at the hearing which will be scheduled by the court. If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the government's objection and may enter an order denying confirmation of your plan.

CERTIFICATE OF SERVICE

I hereby certify that, on **April 26, 2016**, a true and correct copy of the foregoing *UNITED STATES' OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN, COMBINED WITH NOTICE THEREOF* was served:

Via the court's Electronic Case Filing System on the U.S. Trustee and these entities and individuals who are listed on the court's Electronic Mail Notice List:

Warner Mendenhall, on behalf of Debtor Brian Capien, at warnermendenhall@gmail.com

Keith Rucinski, Chapter 13 Trustee, at efilings@ch13akron.com,
krucinski@ecf.epiqsystems.com

Phyllis A. Ulrich, on behalf of Creditor Toyota Motor Credit Corporation, at
bankruptcy@carlisle-law.com, bankruptcy@carlisle-law.com

Daniel C. Wolters, on behalf of Creditor Woods Cove III, LLC, at amps@manleydeas.com,
dcwolters@manleydeas.com

I further certify that, on April 26, 2016 or on the next business day thereafter, a copy of the foregoing *UNITED STATES' OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN, COMBINED WITH NOTICE THEREOF* was served by regular U.S. mail, postage prepaid, on:

Brian Capien
308 Bender Avenue
Akron, Ohio 44312

/s/ Suzana K. Koch

Suzana K. Koch (OH: 0073743)
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3600
(216) 522-4982 (facsimile)
Suzana.Koch@usdoj.gov